IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
ASSIGNED ON BRIEFS NOVEMBER 16, 2009

JESSIE ADAMS v. TENNESSEE DEPARTMENT OF CORRECTION, ET AL.

Direct Appeal from the Chancery Court for Wayne County
No. 12156 Robert L. Jones, Chancellor

No. M2008-02475-COA-R3-CV - Filed December 21, 2009

This appeal involves an inmate's petition for writ of certiorari, which he filed after he was convicted by the prison disciplinary board of participating in a riot. After reviewing the record, the trial court dismissed his petition. We affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, P.J., W.S.,, delivered the opinion of the Court, in which DAVID R. FARMER, J., and HOLLY M. KIRBY, J., joined.

Jessie Adams, Henning, Tennessee, *pro se*

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, Kellena Baker, Assistant Attorney General, Nashville, Tennessee, for the appellee, Tennessee Department of Correction

OPINION

I. FACTS & PROCEDURAL HISTORY

Jessie Adams is an inmate at the South Central Correctional Facility in Clifton, Tennessee, where a riot occurred on July 30, 2007. On or about August 13, 2007, Mr. Adams was charged with the disciplinary offense of participating in a riot, which is defined as follows:

> Participating in a Riot (PIR) (Class A): To organize, promote, encourage, or directly take part in an institutional disturbance involving an assemblage of several persons which by uproar and violent conduct creates grave danger of substantial damage to property or serious bodily injury to persons.

TDOC Policy No. 502.05(VI)(A)(45). Mr. Adams received a "Disciplinary Report" describing his offense, which stated that he "on or about 7-30-07 at approx 1030 did then and there outside of zone 1 11-A recreational building organize, promote, encourage and directly take part in an institutional disturbance involving an assemblage of persons including property damage by breaking windows as witnessed by perimeter [Officer] Davis." Prior to his disciplinary hearing, Mr. Adams filled out an "Inmate Witness Request" form stating that he was requesting, among other things, "all videos of [the] riot." In the space provided for him to summarize a witness's expected testimony, Mr. Adams wrote, "The above [inmate] would request any and all videos of this incident also and especially from stationary cameras positioned above [and] to side of Apollo and Gemini doors." Mr. Adams' request form was marked "denied," with the explanation: "videos not provided in this incident."

A disciplinary hearing was held on August 23, 2007, and Mr. Adams pled not guilty to the offense. The witnesses against Mr. Adams included Officer Davis, who was an eyewitness, and Internal Affairs Investigator Nadolski, who investigated the incident. Officer Davis had prepared an "Incident Statement," stating that he was patrolling the riot situation on July 30 and, with the help of his binoculars, spotted Mr. Adams kicking the windows of the recreational building with the rest of the rioters. At the hearing, Officer Davis testified that he was on the perimeter between Apollo and Gemini buildings, and he saw Mr. Adams "mule-kick" a window one time, then walk away. He explained, "[Mr. Adams] didn't break the window, he kicked it then walked off and the bigger boys kicked them out." Officer Davis said that Mr. Adams was the only inmate whom he "knew from the past" and that he was surprised to see Mr. Adams involved in the riot. However, Officer Davis said he was sure that the person he saw was Mr. Adams. Photographs of the damaged windows were also introduced at the hearing. Internal Affairs Investigator Nadolski testified that he investigated the incident, and that the evidence presented at the hearing was the only

evidence against Mr. Adams. He was questioned by Mr. Adams as follows:

Adams:	Did you observe any video tape of the buildings?
Nadolski:	Yes, I did view them and I was physically there.
Adams:	Was there video tapes of the doors the surveillance video from the system all ways in place [sic]?
Nadolski:	No.

Mr. Adams testified that he was not near the windows at issue during the riot. Mr. Adams also submitted written statements from three inmate witnesses, which were read aloud at the hearing. Although the statements are not in the record, according to Mr. Adams, they all stated that Mr. Adams did not break any windows and that he was not near the windows in question.

The Disciplinary Board found Mr. Adams "Guilty based on [Officer] Davis's testimony that he witnessed [Inmate] Adams kick a window during an institutional riot." Mr. Adams appealed to the warden and to the TDOC Commissioner, but his conviction was affirmed.

On November 13, 2007, Mr. Adams filed a petition for writ of certiorari in chancery court, alleging that the Disciplinary Board acted arbitrarily, capriciously, fraudulently, and/or illegally in convicting him of the offense. The trial court entered an order granting the writ, and the respondents filed a certified copy of the administrative record with the court. Both parties filed motions for judgment on the record. After reviewing the record, the trial court entered an order dismissing the petition for certiorari relief. Mr. Adams timely filed a notice of appeal.

II. ISSUES PRESENTED

Mr. Adams presents the following issues, as we perceive them, for review:[1]

1. Whether Mr. Adams was entitled to relief because the disciplinary report against him contained errors; and
2. Whether the trial court erred in holding that there is no TDOC policy which provides an inmate the right to review videotapes or to present them at a disciplinary hearing.

[1] In his brief on appeal, Mr. Adams raises two additional issues regarding whether the Disciplinary Board erred in failing to provide reasons for denying his witness and evidentiary requests and whether the prison warden "falsified the Ad. Seg. Placement documentation." However, these issues were not raised in his petition for writ of certiorari, so we will not address them on appeal.

For the following reasons, we affirm the decision of the chancery court.

III. DISCUSSION

"The common-law writ of certiorari serves as the proper procedural vehicle through which prisoners may seek review of decisions by prison disciplinary boards, parole eligibility review boards, and other similar administrative tribunals." ***Willis v. Tenn. Dep't of Corr.***, 113 S.W.3d 706, 712 (Tenn. 2003) (citing *Rhoden v. State Dep't of Corr.*, 984 S.W.2d 955, 956 (Tenn. Ct. App. 1998)). The scope of review is limited to a determination of whether the disciplinary board exceeded its jurisdiction or acted illegally, fraudulently, or arbitrarily. ***Id.*** (citing *Turner v. Tenn. Bd. of Paroles*, 993 S.W.2d 78, 80 (Tenn. Ct. App. 1999); *South v. Tenn. Bd. of Paroles*, 946 S.W.2d 310, 311 (Tenn. Ct. App. 1996)). The court is not empowered to inquire into the intrinsic correctness of the board's decision. ***Id.*** (citing *Arnold v. Tenn. Bd. of Paroles*, 956 S.W.2d 478, 480 (Tenn. 1997); *Robinson v. Traughber*, 13 S.W.3d 361, 364 (Tenn. Ct. App. 1999)). "At the risk of oversimplification, one may say that it is not the correctness of the decision that is subject to judicial review, but the manner in which the decision is reached. If the agency or board has reached its decision in a constitutional or lawful manner, then the decision would not be subject to judicial review." ***Powell v. Parole Eligibility Review Bd.***, 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994).

Mr. Adams contends that the Disciplinary Board acted illegally by failing to follow certain provisions of the Uniform Disciplinary Procedures. "The Uniform Disciplinary Procedures exist '[t]o provide for the fair and impartial determination and resolution of all disciplinary charges placed against inmates.'" ***Willis***, 113 S.W.3d at 713 (quoting TDOC Policy No. 502.01(II)). They are "not intended to create any additional rights for inmates beyond those which are constitutionally required," and "[m]inor deviations from the procedures . . . shall not be grounds for dismissal of a disciplinary offense unless the inmate is able to show substantial prejudice as a result and that the error would have affected the disposition of the case." TDOC Policy No. 502.01(V). "To trigger judicial relief, a departure from the Uniform Disciplinary Procedures must effectively deny the prisoner a fair hearing." ***Jeffries v. Tenn. Dep't of Corr.***, 108 S.W.3d 862, 873 (Tenn. Ct. App. 2002).

A. The Disciplinary Report

The Uniform Disciplinary Procedures provide that:

> A disciplinary report which fails to adequately state an offense, contains errors, or has not been properly completed shall be dismissed by the board/hearing officer. However, the reporting officer may reinitiate the case by entering a new report . . . that corrects the error(s) contained in the original.

TDOC Policy No. 502.01(VI)(L)(5)(f)(1). Mr. Adams' disciplinary report stated that he "on or about 7-30-07 at approx 1030 did then and there outside of zone 1 11-A recreational building organize, promote, encourage and directly take part in an institutional disturbance involving an assemblage of persons including property damage by breaking windows as witnessed by perimeter [Officer] Davis." Mr. Adams contends that his disciplinary report contained errors because it stated that he "[took] part in an institutional disturbance . . . by breaking windows," and it was undisputed at the hearing that Mr. Adams did not break the window; he kicked it, and the "bigger boys" broke it out. The TDOC, on the other hand, argues that the disciplinary report does not contain errors. It reads the disciplinary report as stating that Mr. Adams "[took] part in an institutional disturbance *involving an assemblage of persons including property damage by breaking windows* . . . ." (emphasis added). In other words, the TDOC claims that "breaking windows" was simply the type of property damage caused by the assemblage of persons. If we were to read the disciplinary report in isolation, we might agree with Mr. Adams' interpretation. However, the offense being described – "participating in a riot" – was defined as "[t]o organize, promote, encourage, or directly take part in an institutional disturbance involving an assemblage of several persons which by uproar and violent conduct creates grave danger of substantial damage to property or serious bodily injury to persons." It appears that the person drafting the disciplinary report was attempting to track the language of the definition of the offense. Therefore, the TDOC has the more reasonable interpretation of the disciplinary report. The report, although not a model of clarity, basically alleged that Mr. Adams took part in an institutional disturbance, which involved an assemblage of persons that caused property damage by breaking windows. We find no error in the disciplinary report.

We also note that minor deviations from the Uniform Disciplinary Procedures are not grounds for dismissal of a disciplinary offense unless the inmate is able to show substantial prejudice and that the error would have affected the disposition of the case. TDOC Policy No. 502.01(V). When a disciplinary report is dismissed because it contains errors, the reporting officer may reinitiate the case by entering a new report that corrects the errors contained in the original. As such, Mr. Adams was not substantially prejudiced by the failure to dismiss and reissue the disciplinary report.

B. The Request for Videos

Mr. Adams also claims that the Disciplinary Board "violated its own policies" in refusing his request to view videos of the riot.[2] Mr. Adams correctly cites ***Willis***, 113 S.W.3d

[2] It is not clear from the record whether the Board denied his request for videos because there were no relevant videos of the area in question, or because the Board concluded that a prisoner simply had no right (continued...)

at 713, as stating that prisoners have a "qualified right to introduce evidence and call witnesses in disciplinary proceedings." The Uniform Disciplinary Procedures provide that:

> If the inmate pleads "not guilty", he/she shall be permitted the following:
>
> (1) The right to decline to testify. It shall be the burden of the reporting employee to prove guilt by a preponderance of the evidence.
> (2) To have the evidence against him/her presented first. The board/hearing officer shall consider all evidence which it finds to be reliable, whether or not such evidence would be admissible in a court of law.
> (3) To cross-examine any witness (except a confidential source) who testified against him/her and to review all adverse documentary evidence (except confidential information).
> (4) To have the reporting official to the alleged infraction present and testifying at the hearing. . . .
> (5) The right to testify in his/her own behalf after all evidence has been presented.
> (6) The right to present the testimony of relevant witness(es), unless allowing the witness to appear would pose a threat to institutional safety or order.

TDOC Policy No. 502.01(VI)(L)(4)(c). Mr. Adams claims that the second sentence of subsection (2) gives him the right to present any type of reliable evidence. He claims that videos of the riot, assuming that they exist, would be reliable, and that he had the right to present them at his disciplinary hearing. We disagree. We conclude that instruction to the Board in subsection (2) to consider evidence that it deems reliable pertains to the evidence that may be presented against the inmate. It does not grant the inmate the right to present any type of reliable evidence. Courts have repeatedly referred to the prisoner's right to present exculpatory evidence as a "qualified" or "limited" right. *See, e.g.*, ***Willis***, 113 S.W.3d at 713 ("qualified right"); ***Irwin v. Tenn. Dep't of Corr.***, 244 S.W.3d 832, 836 (Tenn. Ct. App. 2007) (same); ***Ivy v. Tenn. Dep't of Corr.***, No. M2001-01219-COA-R3-CV, 2003 WL 22383613, at *4 (Tenn. Ct. App. Oct. 20, 2003) ("limited right"); ***Jeffries***, 108 S.W.3d at 874

---

[2](...continued)
to request surveillance videos. Mr. Adams' denied request for the videos states, "videos not provided in this incident." **(p.109).** Mr. Adams questioned the Internal Affairs Investigator about the existence of videos, but due to the awkwardly worded question, the testimony provides no assistance on this issue:

Adams:	Did you observe any video tape of the buildings.
Nadolski:	Yes, I did view them and I was physically there.
Adams:	Was there video tapes of the doors the surveillance video from the system all ways in place?
Nadolski:	No.

(same).

We are not aware of any authority for Mr. Adams' position that he could present surveillance video at the hearing simply because he contends that it would constitute reliable exculpatory evidence. In ***Bond v. Tennessee Department of Correction***, No. M2006-00622-COA-R3-CV, 2007 WL 1145286, at *1 (Tenn. Ct. App. E.S. Apr. 17, 2007), another prisoner at this same facility was charged with assaulting his wife during a prison visit. He denied the allegation and argued that the Disciplinary Board acted illegally and arbitrarily because, among other things, he was denied the right to present video evidence. ***Id.*** The Court of Appeals summarily rejected his arguments on appeal, finding no basis for the conclusion that the Board acted illegally or arbitrarily. ***Id.***

We similarly find no support for Mr. Adams' contention that the Disciplinary Board acted illegally or arbitrarily by denying his request to view and present the prison surveillance videos. Therefore, the trial court properly dismissed his petition for relief.

IV. CONCLUSION

For the aforementioned reasons, we affirm the decision of the chancery court. Costs of this appeal are taxed to the appellant, Jessie Adams, for which execution may issue if necessary.

_____

ALAN E. HIGHERS, P.J., W.S.